85-1040

Supreme Court, U.S.
FILED
NOV 22 1985
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

BRUNO PAUL KERNER, PRO-SE

PETITIONER

- VS -

THE JUDGES OF THE WORCESTER PROBATE COURT ET AL.

RESPONDENTS

PETITION FOR APPEAL BY
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner's
Jurisdictional Statement

BRUNO P. KERNER, PRO-SE.
30 Wellington Street
Worcester, MA 01610
- no phone

32pp

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the U.S.Court of Appeals for the First Circuit was right when he took the statement of Respondent McDermott for true,which in fact was false.And when he affirmed a divorce decree,without ensuring that there was a legal marriage.

2. Whether the Worcester Probate Court violated Petitioner's civil rights 42 USCS 1983,when he used its power to and avoids the carrying out of the laws of the Commonwealth and thereby takes from Petitioner a property and his assets.When in fact Respondent Healsig's testimony does not stand up to the proof needed.

3. Whether the Probate Judge was right, when he believed Respondent's Attorney, that there is a marriage certificate in the court files, when in fact there was none for the proof of a legal marriage.

# I N D E X

Questions Presented For Review . . . 1

Opinion Below . . . . . 6

Jurisdiction . . . . . 7

Constitutional Provision Involved. . 7

Statement Of The Case. . . . . 10

Reason For Granting The Writ:

1. The Respondent McDermott pointed therin to a question of law,which were misleading,clearly with the intention that a decision on that part may finally dispose the entire case. . . . 12

2. The trial judge could not have drawn any conclusion from a period of three month after the Petitioner became a U.S. Citizen,and both parties lived on the property. . . . . 13

3. Justice has to be done at any time, where it is discovered.A correction of the courts error has been refused.This violates the Petitioners civil rights. 14

# I N D E X

Conclusion . . . . . .16

Appendix A - Opinion, Affirming . . .17

Appendix B - Order Denying Petition For Rehearing . . . . . .19

Exhibit C - Foreign Document . . . . 20

Exhibit D - Divorce Decree . . . . . .21

Exhibit E - Foreign Law. . . . . .13

STATUTES:

Civil Rights Act 42 USC 1983 . . . . .10

Mass.Gen.Laws,Lomb.Ch.62 Sec.1741. . .11

Mass.Gen.Laws,Lomb.Ch.207Sec.1146. . .11

Mass.Gen.Laws,Lomb.Ch.76 Sec.2276. . .13

Mass.Gen.Laws,Lombard, Sec.1035. . . .13

Mass.Gen.Laws,Lombard, Sec.1144. . . .13

Mass.Gen.Laws,Lombard, Sec.1179. . . .14

Fed.Rule 42 USCS 1983, n34 . . . . . .15

CASES:

Norcross v.Norcross,155 Mass. . . . 11

Holbrook v.Holbrook,313 Mass. . . . 13

# I N D E X

Robbins v.Robbins, 140 Mass. . . . .13

Panneton v.Pannet. 323 Mass. . . . .14

Vergnani v.Guidetti,308 Mass . . . .14

Gorrasi v.Manzella, 287 Mass . . . .14

Lariviere v.Lariv., 102 Vt . . . . .14

Scott v.Scott, 153 Neb . . . . . .14

Wiggins v.Hess (1976, CA8 Mo). . . .15

Harley v.Oliver (1976, CA8 Ark). . .15

Argument. . . . . 24

Notice of Appeal . . . . . 30

Certification . . . . . 31

## TABLE OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

The parties to the judgment appealed from the names and addresses of their respective attorneys are as follow:

1. KATHLEEN McDERMOTT, ESQ.
   Government Bureau,
   One Ashburton Place
   Boston, MA 02108
   (617) 727-1003

2. JOHN A. ROMANO, ESQ.
   5 Irving Street
   Worcester, MA 01609
   (617) 791-8255

   Represent for: KATHARINA H. HEALSIG

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No. _____

==========

BRUNO P. KERNER,

PETITIONER,

- vs -

THE JUDGES OF THE
WORCESTER PROBATE COURT, ET AL.,

RESPONDENT.

==========

The Petitioner,Bruno P. Kerner, respectfully prays,on the merits of this appeal to review the judgment of the United States Court of Appeals for the First Circuit,entered October 9, 1985.

OPINION BELOW

The United States Court of Appeals entered its opinion by affirming the divorce decree October 9, 1985. Petition for rehearing of the Order is attached as Appendix A.A copy of denying the petition is attached as Appendix B.

The Courts position is that the Petitioner has lost his civil rights after the divorce decree has been decreed.

## JURISDICTION

On October 9, 1985 the U.S.Court of Appeals for the First Circuit entered a Memorandum and Order - based on the divorce decree,decreed by the Worcester Probate Court, January 30, 1976.

## CONSTITUTIONAL PROVISION INVOLVED

United States Constitution,Amendment VI.

The accused shall enjoy the right - to be informed of the nature and cause of the accusation;

Note. Petitioner has been accused of being married. But no valid marriage license has been made available.

United States Constitution,Amendment V.

No person shall - - nor be deprived of life, liberty, or property, without due process of law; nor shall private pro-property be taken; -

Note. Petitioners home-construction side

has been taken away, plus equipments.

United States Constitution, Art.I.Sec.3.
Full faith and credit shall be given - -
to the records, acts and judical proceedings of the courts and magistrates of every State.
Note. The Court overlooked the official document and laws of the Embassy.

U.S.Constitution, Art.II. Nw.Ord.
In the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, - - that shall in any manner whatever,interfere with or effect private contracts, or engagements; -
Note. The Court violated the Petitioners Constitutional rights to execute his skill or profession by taking away his work and job, while he has been errecting on contract a home on Worc.Acres Lot 281.The Deed hasn't been registered.

United States Constitution,Amendment 14.
Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Note. The trial judge avoid the carrying out of the laws of the Commonwealth during the divorce trial.

United States Constitution,Amendment 7.
( Trial by jury in civil cases.)
In Suits at common law,where the value in controversy shall exceed twenty dollars,the right of trial by jury shall be preserved.
United States Constitution,Amendment 6.
( Rights of the accused.)
Petitioner has been accused of cruel and abusive treatment against the Respondent Katharina Hedwig Healsig.

## STATEMENT OF THE CASE

On August 1, 1984 the Petitioner presented a Federal Claim to the U.S.District Court,District Massachusetts on the grounds of a violation of Civil Rights Act 42 USC 1983. Petitioner's previous residence was Toronto Ont.Canada Pac.,where he lived as a registered immigrant for a number of years,with another immigrant Miss Thea Meisel. Petitioner worked temporary in the U.S. on a work contract,and did not consider staying in the U.S. because his wife lives in Russia. The circumstances changed however and his former plans altered. He errected on contract a home on Worcester Acres Lot 281 in Massachusetts. Where in good faith,he give temporary shelter to the Respondent Healsig. On January 30, 1976 the Petitioner has been accused of being married to the Respon-

dent Healsig and became divorced on the grounds of cruel and abusive treatments. However it became clear that there was no identification in the Court Files, for the proof of a legal marriage to the Petitioner. Because a Marriage Certificate represent for both parties a private property,it could not been withhold.

Mass.Gen.Laws,Lombard,Ch.62 Sec.1741(a)

In absence of a valid marriage the court would have no power to grant a divorce.

10. Norcross v. Norcross, 155 Mass.425, 29 N.E. 506.

Obiously the trial judge void to use jurisdiction. Repeated Petitions by the Petitioner (Mass.Gen.Laws,Lombard,Vol.2 Ch.207 Sec.1146) praying for a review of the divorce were for incomprehensible reasons denied. Respondent McDermott passed the divorce decree to the Fede-

ral Court to affirm it. What is equivalent with signing a false bank check. Respondent Healsig, who is in the 70's of age, ill and incompetent,has been the only occupant of the premises for several years. She also has been several times hospitalized up to 6 month. Her fading health made the proper maintenance of the premises impossible. The fact that there was no marriage,has been proved in an official document,to which Full Faith and Credit must be given,before a divorce decree could be grant. Exhibit C, E.

REASONS FOR GRANTING THE WRIT

1. The Respondent McDermott pointed therin to a question of law, which were misleading, clearly with the intention that a decision on that part may finally dispose the entire case.

The cases she recalls are construed

to prejudice.

Mass.Gen.Laws,Lombard, Ch.76 Sec. 2276

There is no rule of law that makes every judgment, decree or order forever binding or unimpeachable.

56 Holbrook vs. Holbrook, 313 Mass.163, 46 N.E. 2d, 518 (Probate divorce decree revoked; affirmed);

Mass.Gen.Laws,Lombard,Sec.1035

Common Law Marriages not valid legal Marriages in Massachusetts.

39. Robbins v. Robbins, 140 Mass.528, 5 N.E. 837.

2. <u>The trial judge could not have drawn any conclusion from a period of three month after the Petitioner became a U.S.Citizen,and both parties lived on the property</u>.

Mass.Gen.Laws,Lombard,Sec.1144.

A marriage void where it is contracted is void everywhere.

7. Panneton v. Panneton, 323 Mass.477, 82 N.E.2d 595; Vergnani v.Guidetti, 308 Mass. 450, 32 N.E.2d 272; Gorrasi v.Manzella, 287 Mass. 165, 191 N.E.676; Lariviere v. Lariviere, 102 Vt. 278, 147 A. 700; Scott v. Scott, 153 Neb. 906, 46 N. W. 2d 627, 23 A.L.R.2d 1431.

Mass.Gen.Laws,Lombard,Sec.1179

A Certificate of a foreign marriage will not be received in evidence,unless there is proof of a statute of the foreign state or nation.

USCS Rule 31. Translations (Federal Pro)

The court transmitting the record shall report the fact immediately to the Clerk of this Court,to the end that this Court may order that a translation be supplied and,if necessary,printed as a part of the joint appendix.

3. Justice has to be done at any time, where it is discovered.A correction of the courts error has been refused.

This violates the Petitioner's civil rights.

Federal Rule 42 USCS 1983.

Denying procedual guaranteed in one of provisions of Bill of Rights which have been incorporated into Fourteenth Amendment; 42 USCS 1983,-which creates right of action against persons who, under color of state law,subjects another to deprivation of any right secured by Federal Constitution.

Federal Rule 42 USCS 1983, n34.

Judge loses his immunity from liability for damages in violation of 42 USCS 1983 if he acts in clear absence of jurisdiction.

Wiggins vs. Hess(1976,CA8 Mo)531 F2d 920

Harley vs. Oliver(1976,CA8 Ark)539 F2d 1143.

The Court still avoid to give a reason for the divorce decree. There was in fact no cause for any court action.

Because of the Respondent Healsig's incompetency, her Attorney, John A. Romano, spoke for her, her oral testimony. The divorce decree has been decreed and written bare of any identification at hand. Respondent Healsig court papers are sprinkled with errors, because of misunderstanding and misinterpretation from the dialogue between the Respondent and her Attorney. See Exhibit D. In the divorce decree, Respondent's true name, Katharina Hedwig Healsig, is wrong printed as, Hedwig Katherine Kerner.

## CONCLUSION

For the foregoing reasons, Petitioner prays to vacate the divorce decree. The Petitioner see it as a step foreward in the interest of justice.

Respectfully submitted,

Dec. 11, 1985 BRUNO PAUL KERNER

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

| | |
|---|---|
| BRUNO P. KERNER, PRO-SE.<br>Plaintiff,Appellant<br><br>vs.<br><br>THE JUDGES OF WORCESTER PROBATE COURT, ET AL.,<br>Defendants,Appellees | No.85-1570<br><br>MEMORANDUM AND ORDER |

Before: Bownes,Breyer and Torruella,
Circuit Judges

It is readily apparent the appellant is unhappy with the outcome of divorce proceedings commenced against him by defendant Katharina Hedwig Healsig in the Worcester Probate Court. It is equally apparent,however,that the facts alleged in the pleadings simply do not demonstrate a constitutional violation; and that the relief requested is beyond the jurisdiction of the federal courts.See Rooker v.Fidelity Trust Co., 236 U.S.



APPENDIX
- A -

413, 415-416 (1923) (federal courts may not review or modify a state court judgment, even if that judgment is wrong); Armstrong v. Armstrong, 508 F. 2d 348, 349-350 (1st Cir. 1974) (where property issue is entwined with equities of divorce proceeding, federal court should decline jurisdiction).

The judgment of the district court dismissing the complaint is affirmed.

By the Court:

F.P.Sc.

Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 85-1570

BRUNO P. KERNER,
Plaintiff, Appellant

v.

THE JUDGES OF WORCESTER PROBATE COURT,
ET AL., Defendants, Appellees

Before
Campbell, Chief Judge,
Bownes and Breyer, Circuit Judges.

ORDER OF COURT

Entered November 1, 1985

The petition for rehearing is denied.

By the Court,
F.P.Sc.
Clerk



APPENDIX
- B -

FOREIGN DOCUMENT TRANSLATION

Embassy of the German Democratic Republic
Washington, D.C.20036

---

Washington, July 1, 1980

To testify the legality of a marriage, for a Citizen of the DDR, the original of a marriage document has to be made available.

In order to make a paper legal in a foreign country, the original must be authorized by a covering letter, signed for being a true copy by the Ministry for Foreign Affaires of the German Democratic Republic.

signed J.G.

Chief of the Embassy Department



EXHIBIT
- C -

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS. Probate Court

At a Probate Court held at Worcester, in and for said County of Worcester, on the thirtieth day of January in the year of our Lord one thousand nine hundred and seventy-six.

On the complaint as amended

Hedwig Katherine Kerner

of Millbury, in said County praying that a divorce from the bond of matrimony between her and Bruno Paul Kerner of Worcester, in said County be decreed.

IT IS DECREED, NISI, that a divorce from the bond of matrimony between the said plaintiff and defendant be granted the said plaintiff for the cause of

cruel and abusive treatment

on the part of the said defendant and that, upon and after the expiration of six month from the entry of this decree it shall become and be absolute unless,



EXHIBIT - D -

upon the application of any person interested within such period,the Court shall otherwise order,and it is further decreed that the plaintiff shall have the use and occupancy of the home place located at 10 Pineland Avenue, in Millbury for life.

signed: McL.
Judge of Probate Court.

## TRANSLATION OF THE FOREIGN LAW

The German Law requires for the proof of validity of a marriage certificate that, 1. A certified official marriage certificate from the German Democratic Republic; 2. An official legitimacy constituting performance of the marriage; 3. A medical diagnosis of good health and the ability to become a mother; 4. A certification of the true signature, signed by a Notary and the Secretary of Foreign Affairs of the German Democratic Republic.

EXHIBIT
- E -

THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No.85-1570

BRUNO PAUL KERNER
APPELLANT

vs

THE JUDGES OF THE
WORCESTER PROBATE
COURT ET AL.
APPELLEE

PETITION FOR
REHEARING

ARGUMENT

By the Judgment of October 9, 1985, the United States Appeals Court for the First Circuit may have overlooked the fact that only the judges position was represented by the State Defendant Appellee McDermott. The Appellant argues that the Appellee Healsig and the Commonwealth of Massachusetts did not obey the law, and hereby have taken the property and assets from the Appellant under the color of law. Appellants previous residence was Toronto, Ontario, Canada Pac.

where he lived for a number of years,together with Miss Thea Meisel. Appellee gave false information to the court regarding her previous address. The Appellant **never** stood in any marital relationship with the Appellee Healsig.Appellee Healsig is unable to identify herself otherwise than as Katharina Hedwig Healsig. Nothing of substantial value to prove a marriage has ever been recorded or filed in the Appendix. Two years after the divorce trial, a worthless paper,printed in a foreign language found its way into the court files. If that paper became a part of Appellee's testimony,the clerk of the court,in accordance with Rule 30,would have submitted a English translation to the court.That did not happen.The Appellant has made proof by means of an official document, that he is not married to the Appellee Healsig.As a rule,Full Faith and Credit

must be given to a document of the foreign state before a divorce can be granted.It appears that the divorce decree was issued without jurisdiction. This violates the Appellant's Civil Right 42 USCS 1983. The accused shall be liable to the injured party,even if no specific intent to deprive the injured party has been present.(Exhibit). The cases mentioned in the Memorandum of October 9, 1985 do not con-
tain the bottom-line of this case.Acccording to 42 USCS 1983,a divorce decree cannot be granted if the judge used jurisdiction,but clearly evoid jurisdiction.Unquestionable the Appellant cannot become victimized because the court is unwilling to correct its error.This is not family ligitation.Appellant understands that it is an abuse of power when the Probate judge avoids the matter of jurisdiction by making his judgment. The

Probate Judge superseeded the law by his own judgment.Massachusetts General Law, Lombard,Chapter 76,Section 2278 says: There is no rule of law that makes every judgment,decree or order forever binding or unimpeachable.

56 Holbrook v.Holbrook,313 Mass.163,46 N.E. 2d,518 (Probate divorce decree revoked); affirmed); -Zalis v.Krypka,315 Mass.479, 53 N.E. 2d,104 (Probate decree revoked);

Massachusetts General Law,Lombard,Ch.67 Section 1861 says: Homestead after Decree - where probate court has entered decree,the probate court may by its decree grant to his wife or minor children or to both,the right to use,occupy and enjoy such homestead estate until further order of court.

11. Slavinsky v.Slavinsky 287 Mass.28, 190 N.E. 826.

A public service is a public trust.This Court becomes guilty of conspiracy,when it affirms the charges and judgment against the Appellant,without ensuring that the Appellee Healsig holds a valid identification which states that she is married to the Appellant. Against the allegations made in the Memorandum speak Appellant's documents which are the truth. Why should the Appellant accept those alleged divorce proceedings,if there was no cause for a divorce in the first place. Appellee recognizes the error of the lower court,but argues that the lower courts are not in the position to vacate the decree. That is the reason why the case has been presented to the United States Court of Appeals for the First Circuit. Appeal Courts have the power to correct errors made by the lower courts.(See Exhibit).If the Probate Judge had in fact applied juris-

diction, no divorce could have been grant,according to the law. There is no will, joint mortgage, health or life-insurance. General findings regarding divorce proceedings are insufficient for foreign marriage situations. The only relief Appellant seeks is Justice. It is in the Interest of Justice to vacate the divorce decree.

BRUNO PAUL KERNER

NOTICE OF APPEAL

TO THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

FILED IN APPEAL OFFICE US COURT OF APPEALS
FOR THE FIRST CIRCUIT NOV 8 11:20 AM 85

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
NO. 85 - 1570
entered November 1, 1985

| | |
|---|---|
| BRUNO PAUL KERNER, PRO-SE APPELLANT<br>VS<br>THE JUDGES OF THE WORCESTER PROBATE COURT and KATHARINA HEDWIG HEALSIG APPELLEES | NOTICE TO APPEAL TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA ON CONSTITUTIONAL GROUNDS |

Notice is hereby given that Bruno Paul Kerner, the above named Appellant hereby appeals to the Supreme Court of the United States of America, regarding an appeal to vacate a Divorce Decree, upon which Appellate Review had been denied, November 1, 1985. BRUNO PAUL KERNER

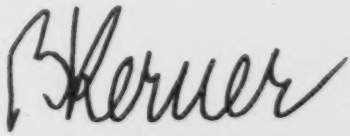
SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.20543

CERTIFICATE OF SERVICE

I hereby testify I have served this Pleading or paper upon each party hereto by mailing a copy, first class mail, to the above named Counsel of record.

Date: December, 11, 1985



BRUNO P. KERNER
30 Wellington Street
Worcester, MA 01610

Equal copies have been mailed to:
Respondent Kathleen McDermott, Esq.
Respondent John A. Romano, Esq.